IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

WP(C).No. 16194 of 2007(C)

PETITIONER:

L.N.POTTI, AGED 45 YEARS,
MANAFGING PARTNER, M/S.GREEN SPOT.
KAITHA MANA, GROVER NAGAR,
N.F.GATE, THRIPUNITHURA, KOCHI.

BY ADV. SRI.RENJITH B.MARAR
SRI.PRABHU VIJAYAKUMAR

RESPONDENTS:

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1. UNION OF INDIA, REPRESENTED BY THE SECRETARY, FINANCE DEPARTMENT.

2. STATE OF KERALA, REPRESENTED BY THE SECRETARY, MINISTRY OF CO-OPERATIVE SOCIETY, THIRUVANATHAPURAM.

3. REGISTRAR, CO-OPERATIVE SOCIETIES, ERNAKULAM.

4. THE ERNAKULAM DISTRICT CO-OPERATIVE BANK LIMITED, REPRESENTED BY THE BRANCH MANAGER.

5. AUTHORISED OFFICER, DEPUTY GENERAL MANAGER, ERNAKULAM DISTRICT CO-OPERATIVE BANK LTD., KAKKANADU, KOCHI, ERNAKULAM.

BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR
SRI.P.V.SURENDRANATH
GOVT.PLEADER SRI.VARGHESE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.K. Basheer, J.

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W.P(C) No.16194 of 2007

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Dated this the 10th day of July, 2007.

J U D G M E N T

Petitioner had admittedly availed of a loan of Rs.20 lakhs from the Ernakulam District Co-operative Bank (for short, the Bank) in the year 2000 for the purpose of establishing an offset printing press. It is on record that the petitioner had furnished as security an item of immovable property belonging to M/s. P.P.Ashraf, P.P.Kunjumon, P.P.Ibrahim, P.P. Ismail and Nabeesa, who stood as surety for the above loan transaction. To make a long story short, petitioner had committed default in repayment of the loan. The Bank has now taken over possession of the mortgaged property invoking the provisions contained under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The said property is now in the possession of the Bank with effect from May 11, 2007. It is also on record that petitioner has remitted about Rs.30 lakhs towards the loan amount. According to the Bank a sum of Rs,. 16,83,387/- is still outstanding from the petitioner as on June 9, 2007.

2. Petitioner has raised several contentions in support of his plea that the Bank was not justified in taking over possession of the mortgaged property. It is also contended by him that the action taken under section 13(2) of the Act is totally vitiated and illegal, particularly since arbitration proceeding initiated by one of the sureties is pending consideration before the competent authority. It is also the case of the petitioner that the Bank is not justified in

refusing to grant all the concessions and benefits available to him under the Schemes formulated by the Government in this regard. At the same time it is submitted on behalf of the petitioner that he is prepared to show bis bonafides and remit a substantial sum towards the arrears outstanding. The limited prayer is to issue an appropriate direction to the Bank to consider the request of the petitioner to extend to him the benefit of the One Time Settlement Scheme and various other circulars governing the field. There is a further request to issue a direction to the Departmental officer to take a decision on the petition submitted by the petitioner under Section 69 of the Kerala Co-operative Societies Act.

3. I have heard learned counsel for the petitioner and also the learned Standing Counsel for the Bank who has fairly submitted that the Bank is prepared to extend all the benefits which the petitioner may be entitled to get under law, if only he shows his bonafides by remitting a substantial sum towards the arrears outstanding.

4. Having regard to the entire facts and circumstances the writ petition is disposed of with the following directions:

5. Petitioner shall remit a sum of Rs.5 lakhs on or before July 17, 2007. A further sum of Rs.5 lakhs shall be deposited by him on or before July 26, 2007. If the petitioner makes the above deposit of Rs.10 lakhs as directed above, and submits a representation before the Bank seeking the benefits of One Time Settlement, the Bank shall consider the request most sympathetically and extend to him all the eligible benefits with a compassionate view. As regards the request for

a direction to the Departmental Officer to deal with the petition under Section 69, it is made clear that no specific direction is to be issued at this stage. It will be open to the petitioner to pursue his remedy if ultimately the Bank turns down his request in the representation submitted by him. The Bank shall not proceed with the sale of the property till a final decision is taken on the representation to be submitted by the petitioner after making the payment. However, if the petitioner fails to deposit any one of the two instalments referred to above, it will be open to the Bank to proceed with the sale of the property as provided under the Act, without any further notice to the petitioner.

A.K. Basheer
Judge.

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